IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.1252 OF 2005
IN
CRIMINAL APPEAL NO.175 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. A.M. Shringarpure, APP for State.

CORAM : V.G.PALSHIKAR & V.C. DAGA,JJ.
DATED : 10TH JUNE, 2005

P.C.

. Heard. The accused persons were prosecuted under Section 307 of I.P.C. and on completion of trial the learned trial Judge on appreciation of evidence convicted the accused under Section 326 of I.P.C. to suffer rigorous imprisonment of 3 years.

2. The State has challenged the acquittal under Section 307 of I.P.C. and has appealed for enhancement of sentence. A perusal of the impugned order shows that the dispute arose over the digging of a bore well. It obviously is a dispute pertaining to property and it is not a case of recurring nature or it is the case where

the accused are hardened criminals who are habituated in indulging in such activity of assault. In such circumstances it cannot be said that the acquittal under Section 307 of I.P.C. was illegal or perverse. Similarly, awarding of sentence being a discretion of the Court in the facts and circumstances of the case the exercise of that discretion to punish the accused for imprisonment of 3 years is a proper exercise which does not call for any interference. Hence Leave rejected.

Appeal for enhancement is dismissed.

(V.G. PALSHIKAR, J.)

(V.C. DAGA, J.)